

A
LETTER

TO

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Mr. WILLIAM TIMMS,

One of the COMMON-COUNCIL-MEN of

CRIPPLEGATE-Within, LONDON.

Containing an

ANSWER

TO THE

REPORT

OF A

Londinensis (Mund)

Committee of Aldermen

Lately made publick, and distributed throughout this City, in Affirmance of the Right of the Mayor and Aldermen to put a Negative to Bills or Acts depending in the Common Council here.

With an *Appendix* of some Entries or Forms of Acts of Common Council, &c. relating to the Controversy.

L O N D O N:

Printed for JAMES ROBERTS at the *Oxford Arms* in
Warwick-Lane, 1724.

LETTER

TO

MR. WILLIAM T. M. S.

One of the Common-Council-Men of

CHRISTCHURCH-WITHIN, LONDON.

N.B. In the References, Rep. stands for Report, a. directs you to the upper Part, b. to the Middle, c. to the lower Part of the Page, Ante points to the foregoing Part, Post to the following Part of this Letter.

Committee of Aldermen

Printed for James Roberts at the Oxford Arms in

the Strand, 1774.

Printed for James Roberts at the Oxford Arms in

LONDON.

Printed for James Roberts at the Oxford Arms in



S I R,

I Do agree with you, that every good Citizen ought to lend his Assistance towards the clearing and satisfying of the Question lately revived amongst us, *viz.* Whether the Mayor and Aldermen of this City have a Negative Voice in Matters propounded and making of Laws and Orders, and admitting of Officers in Common Council? And therefore I will readily contribute my poor Endeavours for that Purpose, and hope that others of much greater Sufficiency, will contribute theirs; that this Question may be speedily quieted amongst our selves, without any Application to be made elsewhere, which may be of very evil Precedent and Consequence.

In the first Place, I beg leave to premise what, how common and obvious soever, yet as I conceive will be very necessary, especially to my fellow Citizens, for the better understanding and more easy Solution of the Question now before us: (that is) That a Corporation is a Creature created by the King to endure in perpetual Succession in such Manner as he has appointed, and is either

Singular, consisting of one Person only: Or,

Aggregate, consisting of more Persons than one.

And these may be either with or without a Head.

With a Head, as Abbot and Convent, Prior and Convent, Mayor and Commonalty, Dean and Chapter, &c. And in some of these aggregate Bodies with a Head, the Head only is capable, and the Body incapable, or dead in Law; as Abbot and Convent, Prior and Convent; in others again the Head and Body are both capable, or in other Words, in these, the politick Capacity rests equally in both, in the Body as well as the Head; in those, in the Head only with Power of Consent or Dissent in the Body: In the former Case, the Head acts with the Consent of the Body; in the latter, the Head and Body act equally according to their different Frames and Constitutions: And such Constitutions where the whole Power is lodged in the one Part, and the Advice and Consent in the other Part, do ever consist of a single Head and a Body, as Abbot and Convent, Bishop and Chapter; and not of aggregate integral Parts, as Aldermen and Commonalty, capital Burgeses and Commonalty, for a Reason I shall give you hereafter: And such Constitutions are ever met with in ecclesiastical or charitable Bodies, as Bishop and Chapter, Master of an Hospital and his Confreres; and never in temporal Bodies that I can find.

Without a Head; as Citizens of such a City, Burgeses of such a Burrough, without Mayor, Bayliffs, or other Head; and in these the Capacity must necessarily rest in all equally.

These Corporations whether sole, or aggregate, may either be

By the King's Grant, within Time of Memory, or,

By Prescription Time out of Mind, which, however pre-supposes a Grant.

Of the first Sort are Cities, Burroughs, &c. incorporate within Time of Memory.

Of the latter Sort, are ancient Cities or Burroughs incorporate before Time of Memory.

Corporations aggregate may consist of two or more Constituents, or several Parts; as Mayor and Commonalty, Mayor, Aldermen and Commonalty, &c. as the Crown shall appoint: And, regularly speaking, without the Concurrence of all these constituent Parts, the Corporation cannot act; as in the Examples put, the Mayor cannot act without the Commonalty, nor the Mayor and Aldermen and Commonalty, without one another, & *sic de ceteris*.

From Incorporation, immediately and necessarily flows Capacity to give and take, to sue or be sued, and (in aggregate Bodies) Power of the Seal, Power to make By-laws, and continue themselves in Succession without more Saying: But other Franchises, Privileges and Advantages, how frequently soever they are used to accompany Incorporations, yet, must be expressly granted by the Crown (or at least supposed to be so) and are not incident of Course.

to an Incorporation; as the Franchise to hold Sessions of Oyer and Terminer, Goal-delivery, to hold Sessions of the Peace, to hold Pleas civil, to execute the Office of Sheriff within the Corporation, in whole or in part, with Grants of Fines, Amerciaments, *bona Felonum & Fugitivorum*, with infinite others: And of these the Crown may grant, more or fewer, at its Will and Pleasure, by the Charter of Incorporation or other subsequent Charters, as it shall think fit.

The Power of making By-laws must be exercised by the Corporation, according to the Quality of their Incorporation, without farther Provision made in the Charter for that Purpose, *viz.* by the Citizens or the major Part of them, if they are incorporated by the Name of Citizens without a Head; by Mayor and Commonalty, or the major Part of them, or by the Mayor, Aldermen and Commonalty or the major Part of them, all put together according to the Tenor of their Incorporation.

If other Provision be made in the Charter, then (ordinarily speaking) according to that Provision, in a Corporation consisting of a Master, Wardens and Commonalty of the Mystery of, &c. wherein is appointed a Number of Assistants with Provision, that the By-laws shall be made by the Master, Wardens and Assistants, or the major Part of them, (excluding the Commonalty) by the same must they be made, though the Company is not incorporated by that Name, but by the Name of Master, Wardens and Commonalty of the Mystery, &c. If the Provision be particularly, that the Master, Wardens and Assistance, or the major Part of them, of which major Part we will the Master shall be one, that Provision or Direction must be also followed. And in the first Provision there is no Negative Voice in any whatsoever, but the Master, Wardens and every of the Assistants have their respective Voices alike without farther Advantage; but in the second Provision, *there is a Negative Voice* given to the Master, whose actual Consent must be had to the making of all By-laws; but without such Provision, the Power of making By-laws rests in the Corporation it self as I said before.

And as it is in Case of making of By-laws, so it is in the Case of Election of Officers or Members of the Corporation, continuing or removing of them with the like Difference or Distinction as above.

And here you may observe, as to me it seemeth, the true Notion of a Negative Voice, where, by the Charter, the Master or other head Officer is entrusted, being present, to assent to, or dissent from the Resolutions of the Majority of the Body; to say he concurs with this, or dissents from that at his Discretion; such Officer in such Case is said to have a Negative Voice. But to say that a Master, Mayor, or other head Officer hath a Negative Voice, because by going away he can dissolve the Meeting *toties quoties*, is to speak very improperly; in the same Sense, any constituent Part of a Corporation may equally be said to have a Negative Voice, because, by going away they may also dissolve the Meeting *toties quoties*, and incapacitate it from Acting; for, a Body must be kept entire, in the constituent Parts of it, to be in a Capacity to act: In the former Case, he gives his Voice Affirmative or Negative as he thinks fit; in the latter, he, by a mean, prevents himself and every Member besides from giving any Voice at all: In that, he acts pursuant to the Charter which has entrusted him with so important a Voice, to use, at his Discretion; in this, he acts arbitrarily, and without Warrant, which is at all Times blameable, but more or less as the Occasion or Circumstances may fall out.

The Use of these Corporations is various, according to the Nature of them.

In religious or charitable Foundations, it is no other but to perpetuate the pious and charitable Benefactions of the Founders from Predecessor to Successor in their politick Capacity.

In Mysteries or trading Bodies, to cultivate and promote Trade, by the Help of By-laws, and the Penalties thereto annexed.

In Cities and Burroughs besides the Increase and Regulation of Trade there, the Use thereof is to preserve the Peace of the Place by Means of Commissions of the Peace, Oyer and Terminer, &c. which are frequently granted to them.

I have but one Word more to premise; If a Corporation accept a new Charter, altering their Constitution, the new Corporation holds and enjoys all the Possessions and Privileges which the old one did, and the old Frame or Constitution notwithstanding subsists, except in the Points altered, and what necessarily flows from such Alteration; and in those Points the new Charter takes Place. As for Example; If Citizens incorporate accept a new Charter impow-

ering

ering them to chuse a Mayor, and that thenceforward they shall be called the Mayor and Citizens, &c. they shall hold and enjoy the same Possessions, Franchises and Privileges as they did before under the Name of Citizens, But, nevertheless, they have lost their old Name and Constitution; for thenceforward they must use their new Name, and not their old one, and must make their Laws and Orders before the Mayor, and not by themselves as they used to do: So, if a Corporation consisting of Mayor and Commonalty accept a new Charter, empowering them to chuse Aldermen, and that thenceforward they shall be called the Mayor, Aldermen and Commonalty of &c. they have lost their former Name and thenceforward must call in the Aldermen to help them to act. On the other Hand, if a Corporation, consisting of a Mayor, Aldermen and Commoners, should accept a Charter appointing them thenceforward to consist of a Mayor and Commonalty only, leaving out the Aldermen, and that thenceforward they shall be so called, *pari ratione*, as to me it seemeth, they must use their new Name and may make By-laws, (a Power incident to every new Corporation and Constitution) without the Aldermen, *except they take in the Aldermen again by a Subsequent Act of the Corporation*, as shall be explained hereafter.

In all Controversies therefore betwixt the several Members of a Corporation for Power, you may observe whither Recourse must be had to decide them.

In Corporations by Charter, to the Charters themselves, and where the Charters are doubtful, to the subsequent Practice in such Cases, which is the best Comment upon them.

In Corporations by Prescription, more particularly to antient uniform and uninterrupted Usage; and such as hath been the Usage, such will the Constitution be supposed originally to have been.

I have not troubled you with the Citation of any Authorities to support the Rules and Observations which I have premised; I believe they need none, they are of such common and ordinary Use, Practice and Reading, as I apprehend.

But to apply what I have said to our present Purpose:

We find that the City of *London* is a Corporation by Prescription, that the royal Charters and Grants from very antient Time, from the Time of *Hen. I.* down to the Time of *Edw. IV.* have been usually made to it by the Name of Citizens of *London*, Citizens of the City of *London*, Barons of *London*, Barons of the City of *London*, Mayor and Commonalty of the City of *London*, to the Mayor and Citizens of *London*, whereof there are Numbers of them to be seen in the printed *inspeximus* thereof, which will be sufficient Authority for our present Purpose; one of them, in the Name of the Mayor and Commonalty, and another in the Name of Mayor and Citizens and all the rest in the other Names above express'd. From the Time of *Edw. IV.* down to this Time for the Space of 260 Years and upwards, the Charters and Grants run in the Name of Mayor and Commonalty and Citizens of the City of *London*, whereof there are many to be seen as above with little or no Variation; not one Charter, that I can find, runs in the Name of the Mayor and Aldermen, tho' I must confess I find the Aldermen mention'd as principal Members of the Corporation from very antient Times.

Hence I infer from what is premised, that the Capacity of the Body to act, particularly to propound Matters fit to be propounded amongst themselves, to make By-Laws and Orders, and to admit Officers, under these several Charters respectively, (for at present I am considering the Question under the Charters, and not under the Custom,) must and ought to be presumed to have rested with the Citizens, with the Mayor and Citizens, and for above these 260 Years last past with the Mayor and Commonalty and Citizens of the said City equally and alike; not in the Mayor only, with the Consent of the Citizens, or with the Consent of the Commonalty and Citizens; or with the Mayor and Citizens, or the Mayor, Commonalty and Citizens, with the Controul of a negative Voice in the Mayor over the Citizens, or over the Commonalty and Citizens, except it can be made appear by ancient Usage and Practice Time out of Mind, that the same Power in the several Instances contended for must and ought to be exercised by some particular Members of the Corporation; as for Example, by the Mayor and Aldermen with the Consent of the Commonalty and Citizens, or by the Citizens, or the Commonalty and Citizens, under such Controul of the principal Members

as aforesaid; and if so, I must agree the Law will go as far as it can without breaking in upon the settled Rules there to support such Usage.

I believe it will be granted to me without farther Deduction, that this Power of the Corporation, is, at last, settled in the Mayor, Aldermen and Liverymen, for several Purposes, *viz.* Election of Members of Parliament, Lord Mayor, Sheriffs &c. in the Lord Mayor, Aldermen, and Common-council-men for other Purposes, *viz.* for making By-Laws, Election of certain Officers, &c. and that this Power is not to be unsettled at this Time of Day.

The single Difference, which remains at present, is, whether this Power thus settled in the Mayor, Aldermen, and Common-council-Men, be subject to the Controul or negative Voice of the Lord Mayor, and Aldermen?

It lies upon those who assert the negative Voice of the Mayor and Aldermen to make out their Assertion, for, as I said before, the Presumption is with the Body, and very well it ought to be made out, to take away, or diminish a Right vested in the Body itself, or their Representatives by their Consent, especially in Points so considerable.

And this leads me to consider the several Opinions of some very great Men, and great Lawyers, in their Times, lately published by the Order of the Court of Aldermen, and the Reasons therein given, in Maintenance of this pretended negative Voice.

And in considering of them, to avoid Repetition and Prolixity, as much as I can, I beg leave to lay together whatever occurs in any of them belonging thereunto, under one and the same Head; what is singular or particular in any of them, I shall reserve to be spoke to separately.

But first, as to the Facts suggested in those Opinions, for, *ex Facto Jus oritur*.

Rep. 9. c.

It is laid down for Fact, "That in all Acts and Ordinances of Common-council (if they proceed from the Commons) there is an Address (not said in what Words or in what Manner) from them to the Mayor and Aldermen before the Act be perfected and pass'd, and this by Constant Usage, *Rep. 5. a. b. c.* That Acts are sent down from the Mayor and Aldermen (by the Recorder) to the Common-Council for their Consent, and others again sent from the Commons to the Mayor and Aldermen by the common Serjeant for their Consent. That as the Commons upon Acts sent to them from the Mayor and Aldermen (by the Recorder) to the Commons, have taken Time to consider before they have given their Assent, so, upon Acts sent from the Commons to the Mayor and Aldermen, (by the common Serjeant) the Mayor and Aldermen have taken Time to consider and sometimes rejected the Act wholly, and sometimes rejected Part and consented to the rest. That the Mayor and Aldermen never voted *per Capita*, in Common-council, except only in the late irregular Times (how otherways they voted it is not said;) And agreeable hereto is cited Lord Coke in his 4th Inst. page 249. who speaking of the Common-council saith; This Court hath some Resemblance of the high Court of Parliament, for, it consists of two Houses *viz.* one of the Mayor and Aldermen, and the other of such as be of the common Assembly, resembling the whole Commonalty of London: In this Court (continues the same Author) they make Constitutions and Laws &c. and these being made by the Mayor, Aldermen and Commonalty do bind within the City and the Liberties thereof: They of the common Assembly do give their Assent by holding up their Hands (not saying how the Mayor and Aldermen give their Assent.) Hence they all strongly infer that the express Consent or Concurrence of the Mayor and Aldermen is requisite; and if requisite, they may give or withhold their Consent at their Discretion, or to this Effect; and that this is by Consequence and in Effect to have a Negative, though it may not perhaps be a negative Voice, properly and strictly speaking.

By all this they, whoever they were who stated or suggested the Facts, would fain have you believe (what they durst not openly affirm in express Terms) that the constant Usage is, for the Mayor, Aldermen and Commons to sit or assemble in two separate distinct Houses or Places; the Mayor and Aldermen in one by themselves, and the Commons in another by themselves; or, however, if they do assemble together in one, and the same Place, yet that they debate, vote, resolve and act as two separate distinct Bodies, how far soever asunder, and send or hand their several Resolutions (thus separately framed) to one another by their respective Officers for each

others Consent or Approbation, the Mayor and Aldermen by the Recorder; the Commons by the common Serjeant. And if this was the Case I could readily apprehend how proper an Address would be from one to the other for their Consent to an Act or Resolve coming from that one to the other; before the same could be perfected and pass'd; and how necessary the Concurrence or Consent of both would be to every Act or Resolve of the whole; and should as readily agree that under such a State each of the two would have a Negative upon the other, and would not be concluded one by the other, (for they would not then act jointly but separately;) but each might reject the Resolves of the other in Whole or in Part as they thought fit. But no such Usage or Separation now is, or ever was, that I can learn either by the Entries of the Books of Common-council or otherwise howsoever; on the contrary, the Mayor Aldermen and Commons always sat together in one and the same Place, there debated promiscuously, and voted *per Capita*, as now they do, as well before, as since the late irregular Times, for any Thing I can find to the contrary, and consequently, were concluded by a Majority of the whole put together. That they sat, debated and voted in such Manner ever since the irregular Times spoken of down to this Time, which is now above sixty Years, the Committee and Staters of the Case do implicitly confess: That they did the like also long before those Times, and, in Short, never did, or ever can legally do otherwise, I shall here endeavour briefly to prove; and whilst I prove that they never could legally do otherwise, I hope I shall at the same Time also prove that in Fact they acted as they ought to have done, and never did act otherwise, till there is Proof brought of their acting otherwise. Rep. 5. 6.

Charters granted to Corporations must and ought to be considered as private Commissions issuing from the Crown, for the more immediate Benefit of particular Persons within particular Places in certain Cases; and you may as well suggest that the Commission of Sewers, or charitable Uses &c. should issue with Power for the Commissioners to act separately, and that Way erect a Check one over another, as that a Charter should endow the Members of a Corporation with such Privileges; never such a Charter or Commission, I believe, was ever seen or heard of. The Charter therefore or the By-law of the Corporation (which ever of the two it was) that gave this Power to the Mayor, Aldermen and Commonalty gave it to them generally; and the same must be exercised by them jointly and not separately. Besides, Separation, be it in one and the same Place or in different Places, and the necessary Result thereof, a mutual Check or Negative in the Parts so separated, one over the other, would retard or perplex Business, and frustrate the Design of the Charter, which is Dispatch.

It is in vain to urge the Precedent of the two Houses of Parliament: Those are original Constitutions beyond all Parallel; ours, but a private Corporation: Here we transact smaller Matters; there they have before them, the arduous Affairs of the Kingdom: Here Dispatch is commendable; there it may be of dangerous Consequence.

It is true, the Mayor and Aldermen now sit, and no doubt of it, ever did sit, by themselves, at the upper End of the Hall or Place of Assembly, as the more worthy in many Respects, and the Commons, at the lower End thereof, by themselves, as the less worthy, representing the Commonalty; and each of them respectively, after a Sort, may be said to resemble the Lords, and Commons in Parliament; but this Resemblance lies in their different Qualities and Degrees, and not in their separate or distinct Power.

It is true also, that the Commoners do give their Votes, by holding up their Hands on the one side of the Question, or the other, and that it is not so usual for the Mayor and Aldermen to hold up their Hands upon the Question put; but nevertheless the Mayor and Aldermen, whenever they are dissatisfied, do divide the Assembly, and then they go out, or stay in, or are numbred with the Side they are inclined to, and that severally and respectively and *per Capita*, and not in a Body; and what Difference this Manner of Proceeding makes in the Case, I cannot apprehend.

It may be true also that in the Times, when all Things were transacted by the Commonalty, at large in the common Hall, before the Establishment of the Common-council in the Form we now see it, where the Assembly was too numerous to debate or speak for themselves, that Business or Proposals might be brought in thither ready prepar'd, either on the Part of the said Mayor and Aldermen, or on the Part of the Commonalty, as Occasion might

serve, and that thereupon some Correspondence might pass betwixt the several Parts of the Body, by the Means of their respective Officers, as betwixt two distinct Bodies, by Reason of the Necessity of the Case, yet in Judgment of Law they acted as one and the same Body and could not regularly act otherwise. And it may be true too that in Messages proceeding from the Commonalty to the Mayor and Aldermen, some Address might be used by their Officer, the common Serjeant, upon those Occasions; but surely, such Address, will amount to no more than what may reasonably be supposed to come from one Part of the Body to the other Part of the same Body, (both of them being become incapable to act together, for the Reason I gave just now) and do not necessarily denote an Address from one distinct House to another. Lastly, it may be very true that in Proposals made by one Part of the Body to the other, whether in the Time of the Common Hall, or since in Common-council, the other Part to whom the Proposal was made (as no wonder it should) sometimes may have taken Time to advise upon such Proposal, and sometimes may have disapproved of the same in whole or in part, and the other Side may have been content and have urged the Proposal no farther; but still this is no more than what may reasonably be supposed to happen betwixt the several Parts of the same Body, different however in other Respects, and doth not evince the Separation and Distinction of Power in the several Parts of that Body.

Rep. 4. b.

Nevertheless, from these Grounds and no better, as I greatly suspect, come what they call the ADDRESS, *the taking Time to consider*, the *Refusals* or *Rejections* so much relied on: And I am the more confirmed in my Suspicion, because of the one only Instance of this Kind which is yet produced; and that is, of an Instance of Time taken to consider, and produced by the Committee themselves (and I doubt not but they would produce their best) and is expressed in these Words, *viz.* "14th of March, 1641, upon two Petitions brought into " Common-Council by a Committee to be presented to the Parliament, they " were read, but not voted, because the *Locum Tenens*, and the major Part of the " Aldermen thought fit to advise". And what does that amount to more, in all fair and candid Construction, but that the Chair and the major Part of the Aldermen appearing to be dissatisfied, and desiring Time to consider, the others, who brought in the Petitions pleased them therein, and did not put the Question at that Time? But the same Petition, was three Days after read again in Common-Council and carried, *Rep. p. 10. a.*

I will mention for them another Instance, which happens to be a pregnant one, an Instance of *Time taken to consider* of *approving Part*, and *rejecting Part*, which I have found altogether in one and the same Entry and it is in *lib. Leg. 17. Die Mercurii* (says the Entry) *prox. post Festum Sanctæ Katherin' Anno Regni Regis E. 3. 28. cor' Adam de Bury, Major' Alderman' & immensa Communit' in magna Aula Guibald London' existen. per eor. com' assensum ordinat' fuit, &c.*

At the same Meeting a Bill was presented, to which 'tis said it was answered by the Mayor and Aldermen to the Commons, that they should more openly declare their Intent, and then they would provide due Remedy, and adjourned the Consideration thereof to another Day when they would give a final Answer; at which Day to wit the *Saturday* after the Feast of *St. Michael* then following, the Commons shewed their Declaration to the Mayor and Aldermen, which is therein set forth; then the Entry goes on, and says, that this Declaration being reviewed and plainly examined before the Mayor and Aldermen, in Presence of the said Commons, was by common Consent of *them all*, ordained and established for the common Profit of all the City, that all the Articles therein contained as aforesaid, should be firmly held and used in the Manner following, except, that the Mayor and Aldermen would not assent; nor did they think it reasonable that the Gild-days should be limited in certain; but that they should remain entirely in the Disposition or Appointment of the Mayor, at which Time he shall think fit for the common Profit of the City. But as to the other Articles relating to the Shop, and as to the buying or selling by Wholesale or Retail, it was assented to by all for the best, that, that Matter should be adjourned to another Time, that they might more easily treat and order that Business: And whether or no this Entry may not in like Manner be fairly accounted for from what I have already suggested, I must submit to you; especially considering whatever was ordained, was ordained by the common Consent of all, as you observe.

But

But it is their Part to produce and explain their own Instances; in the mean Time, I shall examine this negative Voice contended for in all the various Lights wherein they seem to put it.

Suppose we then, that it be said, that the Mayor and Aldermen have what is properly called a negative Voice; that is, that they must always be of the Part of the Majority; otherwise, nothing can be done, or be resolved upon: As in the Case before put, where the By-laws are provided to be made by the Master, Wardens and Assistants, and the major Part of them, of which major Part, we will, says the Charter, that the Master shall be one; there the Master hath properly a negative Voice; and here (say they) the Mayor and Aldermen have a negative Voice: And in support of this Scheme they may urge their *Address*, their *Refusals*, &c. in another Light, and to a fresh Purpose. Ante p. 2.

As to the *Address*, *Refusals*, &c. nothing needs be said to them more, till they produce them.

At present a Negative, in the Manner it is hereby claimed, is against all Precedent and impracticable, as I apprehend.

A negative Voice, is usually trusted with a single Person, who may make Use of it himself, as he pleases, over the Body; but I believe seldom or never with a Number of Persons, who must first settle their Negative by Vote amongst themselves, before they make Use of it over another Number of Persons; and I believe no Instance of such a Negative can be found in any Corporation of the Kingdom.

This Sir *Francis Winnington* seems to allow, and therefore he says, that *London* is not to be compared to other Corporations; and therein he says right: But, surely, *London* is to have the better in the Comparison, not the worse. Rep. 8. d.

Besides, it is not well settled, by whom or in what Manner this Perogative is to be exercised; by a Majority of the Mayor and Aldermen then present, I presume they would have it: What, by a Majority of the Mayor and Aldermen put together? That would destroy the distinct Capacity of the Mayor, and level him with a common Alderman. Or by the Mayor taken singly in his distinct Capacity, and a Majority of the Aldermen? That would endanger the Perogative of the Aldermen, and throw too great a Share of it into the Hands of the Mayor: Suppose there are but the Mayor, and one or two Aldermen present, must they have a Negative upon the whole Common Council? Farther, where, and how is this Majority to be discovered? By Debating and Voting. What, by Debating and Voting, separately by themselves, in Common Council, or in the Court of Aldermen, or elsewhere? If the Mayor and Aldermen withdraw out of the Common Council, the Common Council is, *ipso Facto*, dissolved; and suppose, they should go and debate, vote and resolve elsewhere, those Resolutions taken elsewhere would not be binding (for as I have said before, a Body to be in a Capacity to act, must be kept entire and must not be dismembred) but the Mayor and every Alderman (when they resume the common Council again) may claim his Right to debate and vote there, notwithstanding the Resolutions taken elsewhere. The Debating, and Voting therefore must necessarily be in the Common Council, and if so, would not this create Confusion and Disorder, the Commoners having as much Right to debate there, as the Mayor and Aldermen, and at the same Time too, if they please? But, suppose, they should be able to bring their Scheme into some Consistency, would it not after all, be mere Scheme and Imagination, without any Practice, Usage, or Precedent conformable to support it? This Common Serjeant *Jeffreys* was very well aware of, and therefore says, that he does not apprehend that there are two Courts sitting in Common Council as some have thought, but goes on and puts his negative Vote upon a different Footing, but with how much better Success, I shall speak of particularly hereafter. Rep. 10. b. c.

Suppose we then in the next Place that it be said, that the Mayor and Aldermen have the whole Power to make By-laws, &c. in themselves, to exert whensoever they please; and that the Commoners have nothing left but the Liberty to assent, which Assent, however, when they do give, they thereby add no farther Power (properly speaking) to the Mayor and Aldermen; but only yield them Freedom and Opportunity to act: In the same Manner, as in the Case formerly put of an Abbot and Convent, the Abbot had the whole Power of making Gifts or Leases, &c. within himself; but he could not make Use of that Power, but with the Consent of the Convent; but the Consent being once obtained he gave or leased from his own original Power; the Convent, on their Part, had no more to do, but to attend and give their Advice and Counsel, which nevertheless the Abbot might either follow or reject. Ante p. 1.

ject, as he thought fit. The like would they affirm here of the Mayor and Aldermen with respect to the Commoners: But, as I said before, I cannot easily recollect an Instance of Power in one Part, and a bare Consent in the other Part, except in Constitutions consisting of a single Head and a Body, as Abbot and Convent, Prior and Convent; and not in Constitutions consisting of aggregate integral Parts, as Aldermen and Commonalty, or capital Burgeses and Commonalty. And the Reason of the Difference is manifest: A Body may well be instituted to advise a single Head; but there is no Need for the many to advise the many, they may well enough advise amongst themselves. Besides, such Constitutions are frequently met with in religious and charitable Foundations, as in Abbot and Convent, Prior and Convent, Master of an Hospital and his Confreres; and never in temporal Foundations that I can find, whatever the Reason may be.

But to examine the Arguments wherewith they would support this new Hypothesis.

Some of the learned Lawyers seem to lay the Foundation thereof, on the Charter of the 15. *Edw. III.*

Rep. 6. c. Others again found it upon the Custom, and take this Charter only for an Evidence of the Custom antecedent; especially, Serjeant *Maynard*, who gives us many Reasons why we should take it as Evidence only, and not rely upon it as a Charter.

However all the Lawyers take this of the 15. *Edw. III.* for a Charter; the Committee only have found it out to be an Act of Parliament.

As to its being an Act of Parliament, I shall speak to that hereafter.

In the first Place, I make a great Doubt whether this Clause or Grant in the Charter, so much spoke of, can have any Effect or Operation in Law at all; and I am the freer to argue this Doubt, because Serjeant *Maynard* seems to make little Account whether this Charter stands or falls; but teaches us to rely intirely upon our Custom.

I have before observed that the City was incorporated by the Name of Citizens of *London*, down to the very Time of this Charter; then comes this Charter, which grants and confirms, not to the Citizens of *London*, but immediately *Majori & Aldermannis, quod iidem Major & Aldermanni & Successores sui*, with the Assent of the Commonalty, shall, &c.

A Grant to a Corporation by a wrong Name, can have no more Effect than a Grant to a natural Person by a wrong Name: But this is a Grant to a Person, not in *Rerum Natura* which is worse; for, the Mayor and Aldermen were no Corporation but a Part only of the Corporation, and I dare say they will not offer to affirm that this Charter incorporated them for this Purpose by Implication.

Ante p. 1. But suppose this to be construed to be a good Grant made to the Corporation, *quod Major & Aldermanni*, &c. and suppose (to make as much Hast as I can) that by the Acceptance of this new Charter, the Citizens of *London* lost their former Privilege of making By-Laws as they used to do, and were confined to make By-Laws thenceforward by the Mayor and Aldermen *ex assensu*, &c. as that Charter directed, &c. surely, by their own Way of arguing, that Direction could continue no longer in Force than till a new Charter came to alter their Constitution; for, as the Citizens lost their Privilege of making By-Laws in their former Way, by accepting of a new Charter with Directions only how otherwise to make the same for the future; so, *a fortiori*, they must lose this new modelled Power of making By-Laws by a subsequent Charter, altering their very Constitution: And such Charter some Time after followed, in the Time of *Edw. IV.* incorporating them by the Name of Mayor and Commonalty and Citizens, under which Name it has continued to this Day; for, as I said before, the Power of making By-Laws is a constant Attendant upon a new Incorporation, and the former Power is drowned in the latter, otherwise they would subsist as many distinct Powers for that Purpose in Corporations, as there have been different Constitutions.

But they seem to be aware of this Answer, or some better, and therefore they seem chiefly to rely upon this Charter only as an Evidence of making By-Laws in the like Manner formerly, and what we have to say to it in that Light, you shall meet with hereafter.

The next Argument wherewith they endeavour to support this last Hypothesis is drawn from the Forms of penning the Acts of Common Council, and the Manner of pleading them. And here I will agree that great Stress ought to be laid upon the Manner of penning the Acts especially, because this is what both Parties must be privy to, and cannot be ignorant of; but as to the

the Manner of Pleading, Returns and Certificates, the Commoners hear nothing of them, they are managed by every private Suitor as he pleases, or by the Officers belonging to the Courts of the Lord Mayor and Sheriffs.

They are pleased to allow that the Entries are in different Forms.

Some mentioning the Acts to be made by the Lord Mayor and Aldermen with the Consent of the Commons, in Favour (as they infer) of their Doctrine, that being the Manner of Expression, most proper (strictly speaking) to denote the Power to rest with the Mayor and Aldermen, and the Liberty of Assent only in the Commonalty.

Some by the Lord Mayor, Aldermen and Commons, by their common Consent.

Some by the Mayor, Aldermen and Commonalty, in Favour (as we infer) of what we contend for: That being the Manner of Expression proper to denote the Power to rest equally in the Commoners as well as in the Mayor and Aldermen. Which of these Forms abounds most, it is not said; I suspected the two latter were more numerous, otherwise they would not have spoke of them so tenderly, especially Common Serjeant *Jeffreys*, who had travelled so far in Precedents; and so it comes out. Rep. 11. a.

I have caused Copies of several Entries of the Manner of penning Acts of Common Council, as many as I could conveniently collect, in so short a Compass of Time, to be subjoin'd hereto, whereby you may make the better Judgment in this Question your self:

Some more ancient.

In the Time of *Edw. III.* whereabout there is so much Pother, and some in the Times immediately following that:

Some in the Times of *Q. Eliz.* and *K. James.*

Some immediately upon the Restoration.

Some since this Dispute began.

In the Year 1675.

After the Year 1683. And,

Some of later Date.

Amongst them you will find one very authoritative on the Part of the Commons, of which they have said nothing, *viz.* It is ordained by the Mayor, Aldermen and Commons in Common Council assembled, and by the Authority of the same; and this Form is to be found as high up as in the Time of *Hen. VIII.* and has been the prevailing Entry ever since, tho' the same in Effect was included in the Entries most ancient, as you may observe.

To these I have added,

The Form of Words whereby several Acts of Parliament do grant or delegate any Powers or Authorities to the Common Council.

The Articles of Addresses, Petitions, &c.

I will conclude this Head with one single Observation, and the Quotation of one single Authority. The Observation is, that one Precedent with Common Right will outweigh many against it: The Authority is what they, on the other Side, have furnished me with out of my Lord *Coke*, in the Place formerly mentioned, where he says, "That these being made (speaking of the By-Laws of the City) " by the Mayor, Aldermen and Commonalty (not by Mayor and Aldermen, with the Consent of the Commonalty) " do bind " within the City and the Liberties thereof". And I cannot but join with Recorder *Dolben*, " That this being a Matter of Usage, and he a Person of Rep. 9. c. " very great Experience, (and especially having been Recorder of *London* in " a quiet serene Age) could not be ignorant of the Usage.

As to the Forms of Pleading, and of the Returns of *Hab. Corp.* and *Certioraries*, these fall in more properly under the Article of Custom, to which Place I refer them, and pass them over in the mean Time: *Post.*

I come at Length to Mr. Common Serj. *Jeffrey's* Scheme or Hypothesis; Rep. 10. b. c. and I call it *his* in particular, because, tho' others have touched upon the same (among other Things) here and there, yet he singles it out from all others, and puts the whole Question upon it.

The other Lawyers set up but one negative Voice, and they have enough to do to order that; this ingenious Gentleman sets up no fewer than three; we shall see how he manages them.

He says, " That the Court of Common Council does consist of the Lord " Mayor, Aldermen and Commoners; and that it is of absolute Necessity " that there be a Meeting and Concurrence of all three, to the making of " any Law, or to the Election of any Officers by that Court; for, (says he) " tho' I do not apprehend that there are two Courts sitting in Common " Council, as some have thought, yet I plainly conceive that all the three

" Estates (as I may so call them) must be present and consenting to every Act of that Court that is obliging; and this will plainly appear (says he) to every unprejudiced Person, if we consider them apart". I shall follow him in his Consideration immediately.

At present as to the Foundation of the whole.

That it may be absolutely necessary, that the three Estates must be present for the doing or performing any Act of the Court, I may perhaps grant him; but that the express Consent or Concurrence of each several Estate or Degree is necessary, (so long as they are all present) that I utterly deny; but the Common Consent of the Majority of all put together is sufficient to any Act of the Court, tho' two of the Estates were out-voted by the third.

Ante p. 2.

Suppose, in the Case before put, of a Corporation consisting of a Master, Wardens and Commonalty, wherein is appointed a Number of Assistants; and that the Master, Wardens and Assistants, may make By-Laws, without more saying, or any Institution of a negative Voice any where; it may be true that the Master, Wardens, and some of the Assistants, must necessarily meet and be present, (because this petty Body, as all other corporate Bodies, must meet in the several constituent Parts thereof before it can act) but when they are once met, there is no Necessity that they should all severally concur or consent, but all of them together make one Body, and that Body is actuated by the Majority of the whole, whether the Master or Wardens were with or against the Majority, or whether they voted at all or not: And this is in constant and daily Experience, and no where more than in this City. The like may be said of all other Corporations in the like Case, *Mutatis Mutandis*.

So in the Case of the *Scotch* Parliament, before the Union, the separate Consent or Concurrence of the Lords there was not necessary (whatever their Presence might be) but both Lords and Commons were bound by the Majority of the whole.

So in Case of the Bishops and inferior Clergy, when they met in Convocation, in one and the same House (as I have some where or other read that they anciently did) no separate Consent was asked for, nor wanted, from each of the two Estates; but the Body was actuated by the Majority of both put together; but when that Body came to separate into two several Houses, as now we find them, then under this Circumstance of Separation, the separate Consent of each became necessary to the Acts of the whole. Such would have been the Case of the Lords and Commons in *Scotland*, if ever they had separated; but our Body never did, nor ever could, legally separate, as I have endeavoured to prove elsewhere, whatever these original Constitutions might be allowed to do: And yet it is the Resemblance made of this Body of ours, to the Estates in Parliament, how improper soever, that has so long puzzled our Notions about this Matter; without observing the Difference of a Body assembling in one and the same Place, and in different Places, and betwixt original Constitutions and private Bodies in Corporations; and by their Insinuations of the very same Resemblance, you may remember how they endeavour'd to impose upon us in the beginning: A Case so plain, I cannot tell how to make it plainer.

Ante p. 4.

I shall now follow him in his Consideration of the several Estates as far as he goes.

He says, " That the Lord Mayor hath the Power of summoning and dissolving the Common Council; and that, by uninterrupted Usage, except in the Time of the unhappy Troubles, and consequently, a Negative". That is a mistaken Notion of a Negative, as I have already shewn; besides, such Power is placed with the Lord Mayor for Necessity and the Sake of Order, to be by him exercised, as the Occasion or Desire of the Body may require, and not as a Privilege to be by him exercised, merely at his Will and Pleasure.

He proceeds, " That by the constant Form thereof, all By-Laws are enacted or ordered by *Lord Mayor, &c.*" That in the Returns made by the City to the Courts above, upon several Writs, they do affirm their Laws to be made by the *Lord Mayor, &c.* That the several Acts of Parliament which delegate any Authority to the Common Council, direct the same to be done by the *Mayor, Aldermen and Commons*, in Common Council assembled, whence he concludes, that the express Consent of the Lord Mayor must always be had, and if so, he may either give or withhold it at Discretion and consequently hath a Negative; than which nothing can be a plainer Fallacy. In the same Way of arguing he might have concluded, that the express Consent of every Mayor and every Dean in *England*, is absolutely necessary

to

to every corporate Act, which we know is not, any more than the express Consent of any other Member whatsoever of the Corporation; the Presence indeed of Mayor, Dean, or other Head of the Corporation is absolutely necessary to a corporate Act (for without him they can do Nothing) but his Consent or Concurrence is involved in the Majority, in like Manner as the Consent of every other Member, except it be otherwise expressly provided by the Charter.

We go on to the Consideration of the other Estate, the Aldermen; and in them he establishes a Negative by the very same Arguments, wherewith he had before established a Negative in the Lord Mayor, every where joining Presence and Concurrence or Consent together, and inferring the Necessity of their express Consent or Concurrence, from the Necessity of their Presence; but we have unfolded this Fallacy in our Answer to the former Head, and to that, I refer you.

He does confess that he could not find by the Precedents and Practices of ancient Time, that a certain number of Aldermen, were required to be present to constitute that Court, but sometimes there have been more, and sometimes fewer present, yet he never found any Act of that Court, without the Consent of the Aldermen.

Then Aldermen in the plural Number will suffice; suppose two of the Aldermen present consent with the Commons, may not the Act that passes be said to pass with the Consent of the Aldermen, literally speaking? If that will not please, but all the Aldermen or the Majority of them must be consenting, then the same Questions may be put as formerly, when and how the Majority is to be discover'd, which I will not repeat. *vide ante* p. 7.

But it is said, if *their Consent were not Necessary, the declaring of them to be there, would be vain and illusory*. By no Means; their Presence, Weight and Debates were deemed of great Consequence to the Body.

But if *they must be there to create the Court, their Consent is essentially necessary to every Act of the Court, &c.* No Consequence at all; one or more Justices of *Quorum* must necessarily be present to create a Court, but his or their Consent is not absolutely necessary to an Act of the Court, but the Majority gives the Rule. But the Acts are said to be made by *their* Consent: The Acts of the Majority are virtually the Acts of the whole, and are properly enough said to be made by the Consent of every individual Member, as I have already said in other Words.

There is one Particular more, wherewith the common Serjeant enforces Rep. 13. a. his Scheme which I must not forbear to take Notice of: He says, "All regular Committees that derive Authority from the Common-council consist of Aldermen and Commoners, and the Lord Mayor by the Custom of the City is of every Committee and may be present if he pleases." By which he would signify to us, as I conceive, that the Committee is properly extracted from all the three several Estates, agreeable to his Plan, and then he goes on and says, "That no Report was ever thought to be regularly brought into the Common-council, from any such Committee that had not the Concurrence of the greater Part of the Aldermen of the Committee." I will not dispute the Fact with him, tho' I believe, I very justly might; but pray what is become of my Lord Mayor? Is not he a several Estate as well as the Aldermen? Is not *his* Concurrence as necessary to this regular Report as the Concurrence of the major Part of the Aldermen? And yet his Lordship, for the most Part, is not so much as present, as he himself insinuates. To what Shifts are the greatest Men driven sometimes!

But it may be objected that by my Concessions I have granted them all they ask, for if the Court cannot proceed without the Mayor or without the Aldermen, then the Mayor or Aldermen, staying away or going out, may prevent all Business. To wave any other Answer, I have formerly said, that whoever is appointed to act in Conjunction with others, and by a mean willfully prevents the actings or proceedings of both, he is guilty of a Breach of Trust; and, for any Thing I know, may be punished for it.

I have now gone thro' Mr. Common-serjeant's Scheme, which I have often heard, a great Man in the City, very knowing and conversant in all Questions whatsoever, as well as in those of this Place, lay great stress on, but I cannot yet see the Reason.

But (say they) all this is arguing under the Charter; but we are under a Custom, which is much stronger than a Charter, and will warrant that which a Charter cannot.

I do agree that Custom is much stronger than a Charter, but not stronger than a Prescription or a Charter before Time of Memory. Prescription and Custom differ only in the Manner or Form of Pleading, not in Effect or Operation in Law, and under *that* have we been arguing all this while, and not under a Charter within Time of Memory. Besides, the Powers contended for, (*viz.*) the making of By-Laws, the Appointment of Officers, &c. and by the Means of the known Members of a Corporation, as by Mayor, Aldermen and Common Council Men, do lie in Point of Grant or Charter, and, as I apprehend, must necessarily be presumed to have flowed originally from thence; and consequently ought to be measured or adjusted by the same Rules of Construction as other Charter-Privileges usually are.

But let them fancy what Difference or Distinction they please betwixt Custom and Prescription, we will go on and examine the Proof produced to evince this Custom.

Rep. 6. c. First, say they, the Charter of the 15 *Edw. III.* is a strong Evidence that there was such a Custom antecedent to that Charter; and Serjeant *Maynard* gives a very remarkable Reason for it; "It is utterly improbable (says he) that the City would have accepted a Charter with such Direction for the Mayor and Aldermen to make By-Laws, *Ex Assensu Communitatis*, unless it had been their Custom to do so before, it would have been so disadvantageous to the Commonalty, or to that Effect."

Rep. 1. b. The Gentlemen of the Committee point out to us another Reason why it ought to be construed as an Evidence of the like Custom antecedent, because the Charter does grant and CONFIRM to the Mayor and Aldermen, &c. and it could not properly CONFIRM to them what they had not before.

I am surprized to find a Claim so extraordinary no better supported.

Will the Charter last mentioned with Serjeant *Maynard's* Reason be deemed an Evidence of any great Consequence in this Case? I dare say, not; besides, we will endeavour speedily to draw as strong an Inference from his Topic another Way. *Post.*

Will the Argument be much improved by the Stress and Emphasis the Committee has been pleased to lay upon the Word CONFIRM? I think not; for is not the Word *grant* there also as well as the Word CONFIRM, and is not the Word *grant* as significative of a new Privilege as the Word CONFIRM of an old one? And how do you determine the Word CONFIRM to be the operative or effective Word, any more than the Word *grant*? If you say both were added to hit the Case as it might come out, it may be so, but then you must prove the Case to be as you would have it, otherwise, and from other Arguments, and not from the Words of the Charter.

Another Argument they make Use of to prove this Custom, is taken from the Forms of Pleading, and of the Returns of *Hab. Corp.* and *Certioraries*, &c.

I must agree that the Custom of *London* to make By-Laws, and the making those By-Laws, pursuant thereto, is generally laid to be by the Mayor and Aldermen *Ex Assensu Communitatis*, and very probably that Form was first introduced by that Direction above mentioned in the Charter of 15 *Edw. III.* and that that Form might be continued after that Direction was superseded: But in the famous Case of the *Quo Warranto* against the City of *London*, and that (if ever any) was drawn by great Advice of the learned Sages of the Law, both the Custom and the making of the Law there objected to them, is laid to be by the Mayor, Aldermen and Commoners in Common Council assembled, and not by the Mayor, Aldermen, *Ex Assensu Communitatis*: In like Manner is the Custom set forth in *Foss* against *Brayberd*, the same Case with that of the Plasterers and Bricklayers in *Palm 395. Mich. 21. Jac. B. R.* And so in *Pain* against *A. H. B. Sup. 1659. Tho. Entr. 120.* and in many more Cases, which I question not, might be found out by one who had Time to search. However, in all the Precedents which I can find where the Custom and the making of the Law is set forth, to be by the Mayor and Aldermen *Ex Assensu Communitatis*, yet, in those very Precedents, when the Law it self comes afterwards to be set forth in *hæc Verba*, (as it frequently is) there it appears to be made by the Mayor, Aldermen and Commons, or by the Mayor, Aldermen and Commons in Common Council assembled, or otherwise, according to the several Forms thereof above referred to, and yet no Objection taken to the Variance that I can find.

I have already limited to you that these Precedents are under the Management of the several Suitors or Officers who do not usually stick upon the strict Propriety or Formality of the Expression of the Precedent, if it will but serve their Turn in the Main; and it is known very well amongst the Practi-

cers how one Precedent begets another, and consequently such Precedents to which the Commoners are no Ways privy, ought not to prejudice the Commoners in Contradistinction to the Mayor and Aldermen against common Right, and constant, uninterrupted Usage; but after all, let us see whether this be not a mere Complement or Formality of Expression.

The general Laws of the Kingdom were formerly said to be enacted by the Crown, by and with the Consent of the Lords and Commons in Parliament assembled, without more saying, and yet the Legislature was held then, as now, to reside with the Lords and Commons as well as with the Crown; but this was an Expression of Respect to the Crown from the Lords and Commons.

Two joint Tenants of *Blackatre*; and both of them are made Parties to the Deed, but one of them only *Ex Assensu* to the other grants or leases, and both execute the Deed; will not that carry the Interest of them both?

Two or more are in Commission; suppose, Commission of Sewers, charitable Uses, &c. and the first in the Commission, or those of the *Quorum*, make the Order or Decree *Ex Assensu* of all the rest, and so it is entred; is not that the Order or Decree of them all? And so, I am told, is the constant Form of the Ecclesiastical Courts, to enter Judgment, as given by the first in the Commission, *Ex Assensu* of the rest.

So here, tho' the By-Law be laid to be made by one Part, *Ex Assensu* of the other, yet in Effect and Virtue it is equally the Law of them both, and the Difference of the Form of Expression makes no Alteration in the Case; for, as I hinted before, I can find no Advantage taken of the Variance between the Allegation of the Custom and the enacting Part of the By-Law appearing upon Record (the one being by the Mayor and Aldermen *Ex Assensu*, &c. and the other by the Mayor, Aldermen and Commoners) either by Demurrer or upon a Writ of Error; tho' to be sure, such Difference of Expression in the Entries of the Common Council Books are of great Consequence in the Question for the Reasons given before.

To this I may add, that the Objection we made to this Negative Voice, under a Charter; *Scilicet*, That it was unprecedented and impracticable, is equally strong against it under a Custom, if not stronger.

Custom springs from the Usage of Times most ancient, and Simplicity and Equality, or Parity, are the Badges or Characteristicks of ancient Times.

A Custom for the Inhabitants of a Town, or a Vill, or the Majority of them, to make By-Laws touching their Common, &c. are to be met with in many Places; so for Homagers of a Court-Leet or Court-Baron to make By-Laws to bind within the Mannor.

But a Custom for the Inhabitants of a Town, or the Homagers of a Mannor to make By-Laws, but under the Check or Controul of a Negative in one or more Person or Persons, I believe is scarce to be met with any where; much less a Custom empowering some of the Inhabitants to make By-Laws, with the Consent of others of them: So the Forms of ancient Charters run to the Citizens of such a City, to the Burgesses of such a Burrough, or to the Inhabitants of such a Vill, without so much as erecting a Head over them, much less giving their Head, or other Members whatsoever a Negative over them: Such Check, Inequality and Clashing of Powers, savour not of the Simplicity and Plainness of ancient Times, but are the Contrivances of After-Ages, when Mankind strove more than formerly they did for Superiority over one another.

I will conclude this Article with an Observation which Serjeant *Maynard* Rep. 6. c. lately suggested to me, (*viz*) "That it is utterly improbable that the City
" would ever suffer such a Custom to obtain (and without their repeated Sufferance, no such Custom could ever obtain) " to give all the Power in so material a Point to the Mayor and Aldermen, and to keep none, in Effect, to themselves.

Next after their several Schemes or Hypotheses I go on to the other Arguments which, as to me they seem, are indifferently applicable to any of them; I shall leave you to place them where you shall judge most proper.

" It is urged, that if the Mayor and Aldermen have not a negative Vote, but
" must vote *per Capita*, they may as well have no Vote at all, because the Commoners are far more numerous and will Out-Vote them, and so the principal
" Members of the Corporation will, in Effect, be excluded from their proper
" Share in that Court; and the Inferiours give Laws to their Superiours,
" which is absurd and incongruous, or to that Purpose.

First, the Mayor and Aldermen, at worst, have their Votes in the Common Council as well as the Commoners, besides the Influence they always have had, and ever will have, from their Station in Life, upon the inferior Body, and the Party they must always find amongst them of their Opinion, if they are not extream singular. Again, the Commonalty and Citizens of the City, collectively taken, must be allowed to have a far greater Share of Property within the City than the Aldermen have, and, consequently, ought to have a greater Share in the Government thereof. However, be that as it will, you know the Distribution of Power in the Body politic, must be measured and adjusted by the Charter or by ancient Usage, and not by uncertain Arguments *ab incongruo* or *inconvenienti*.

But please to let us examine whether the Mayor and Aldermen have any just Reason to repine at the Share of Power or Jurisdiction which they at present enjoy in the Corporation, tho' this Negative should not be yielded to them in Common-Council.

They have an Outer-Court, and an Inner-Court;

In the Outer-Court, they hold Plea of Actions personal to any Amount whatsoever, and, particularly, have the Execution of those By-Laws, which they before assisted at the Making of, committed to them: *There* they also hold Plea by *English* Bill in Cases of Equity.

In the *Inner-Court*,

They have the Government of all City Orphans, their Marriages and Estates, till their Age of 21.

They transact the Business of the Corporation, whether originally to them assigned, or since transferred by the Act of the Corporation.

As the Granting of Freedoms, whereby they confer the Privileges of the Freedom of the City.

The granting of Liveries, whereby they confer no less than a Right of Voting in Elections for Members of Parliament, for Sheriffs, and other Officers of the Corporation.

Some Preheminence in the Election of Sheriffs.

Appointments of several Officers.

Recorder,

Secondaries, &c.

Nomination of the Commissioners of the Court of Conscience, with many others; and in Fact, and as Matters are now managed, exercise almost all the Power of the Purse and the Seal.

They have amongst them the Jurisdiction of the Hustings, where Pleas real are, or may be held and determined.

The Commission of Oyer and Terminer, Goal-Delivery and of the Peace.

Every Alderman in Particular, hath a Court of Wardmote for the Election of Common-Council-Men and other Wardmote Officers.

On the other Side the Commons have, or at least ought to have in the Common Hall:

The free Election of Mayor, Members of Parliament, Sheriffs; their Chamberlain and certain other Officers.

In the Wardmote,

The Election of their Aldermen, Common-Council-Men, and other Wardmote Officers.

In the Common Council,

Their Share in Making By-Laws.

Appointments of some Officers.

Some small Use of the Seal, and the Purse yet left them.

But their Share in these Particulars last mentioned, is disputed to little or nothing, as you observe; and so may their Share in the other Particulars be disputed too by the very same Arguments, and as strongly as I apprehend.

I do not so much as mention the many and various Powers granted to the Mayor and Aldermen by Statutes, ancient and modern, or the Prerogatives of the Chair.

In my Opinion therefore, the Mayor and Aldermen have reason enough to be content with their Lot, without attempting to engross the whole Power of the Common Council to themselves; I say, the *whole Power* of the Common Council, for, whoever has the Negative in an Assembly, will prove himself a very sorry Politician, if at one Time or other, or from one Set of Men or other, he does not gain his Points: And this Argument, as far as it goes, inclines to the Side of the Commoners, and not of the Mayor and Aldermen,
except

except it shall be thought unreasonable and incongruous that the Commoners should have any Power left them at all.

The next Argument is taken from the Act past in the late Times. For say they, "If the Mayor and Aldermen had not had a negative Voice, what need-
" ed there an Act to take it away from them; and if they formerly had such
" Advantage, the usage since is too recent to prejudice it.

To make this Argument of any Weight, it ought first to be proved that the Mayor and Aldermen had a negative Voice antecedent to this Act; but not one Tittle of Proof is yet produced for that Purpose, except only the Charter of *Edw. III.* and that (howsoever taken) is no Proof whatsoever of a negative Voice neither (properly speaking) as I have shewn already.

It is true, it is somewhere said in the Opinions, that the Mayor and Aldermen never *voted per Capita in Common Council, before the late Irregular Times*: Rep. 5. b. And I do presume they would thence have us believe, that till those Times they voted in a Body.

It is also said by the Report, that *the negative Voice of the Mayor and Aldermen in making of By-Laws in Common Council, was never* (that we can find) Rep. 1. c. 2. a. *called in Question, or objected to, untill the Time of the unhappy Troubles in the Year 1644*: And in another Place of the same Report, it is said more expressly and clearly: That *by this Act of the Commons in Parliament, the Lord Mayor and Aldermen were first deprived of their Right to a Negative*; but no Proof is produced by these worthy Gentlemen, to support their Assertion.

At present, therefore (as I have often said) the Presumption is with us, without farther Proof to the contrary; especially, since as they themselves own the subsequent Usage hath been to vote *per Capita* ever since the Restoration; and in Times, as well favourable as proper for the Use of this Prerogative.

But the Report itself has help'd us to a much closer Answer to this Argument. Rep. 2, 3. 10.

In the Times immediately preceding that Act, the Mayor and Aldermen adhered to the King and his Ministers, and the Commonalty and their Representatives to the Parliament in the unhappy Rupture that then was betwixt them. The Commonalty were perpetually teasing the Lord Mayor either by Rep. 3. a. their Representatives for a Common Council, or by themselves for a Common Hall: The Lord Mayor and his Brethren (or the better Part of them) were averse from calling either; for, they knew what Use the Commonalty designed to make of them. When he was in a Manner forced to call Common Councils he met there as he expected, whatever could tend to the Encouragement of the ill Humour and Disorders of those Times, such as *Petitions for a Common Hall, Petitions to the Parliament for Justice against all capital Actors, from the highest to the lowest in the War against the Parliament*. The Lord Mayor gave them all the Diversion he could, sometimes by adjourning the Meeting, or desiring Time to consider, at other Times by insisting for himself and his Brethren upon a Negative; and when that would not go down, then, by taking up the Sword, and leaving the Court: The Commons notwithstanding, at last stay behind, vote and send up their Petition by themselves to Parliament with a Narrative of that Days proceedings: That Narrative produced an Ordinance of Parliament, touching the Calling and Holding of Common Councils, and that Ordinance others; which at last ended in the Act mentioned upon an Appeal made by both Parties to Parliament for their Interposition.

" The Act ordains that in all Times to come, all Things proposed in Com- Rep. p. 10. mon Council should be fairly debated, put to the Question, voted and determined, in and by the same Common Council as the major Part of the Members present in the said Common Council should desire and think fit", and then goes on to take away the Pretence then put in Use by the Lord Mayor and his Brethren to a Negative; and the Power then practised by my Lord Mayor of adjourning and dissolving the Common Council at his Pleasure, in the Words in the Report mentioned.

The Act is a very good Proof, that the Lord Mayor about that Time, did in Fact adjourn or dissolve the Common Council at his Pleasure; and that he himself, or he and his Brethren together pretended to a Negative; and that by such Means, and under such Pretensions, they obstructed the Progress of all Business; and it is the like Proof that the Commons and Parliament were extremely provoked at it, insomuch, that we know that Sir *Richard Garney* Lord Mayor, was sent to the *Tower* by the House of Commons for dissolving the Common Council without giving them leave to act: But it is no Proof at all with what Right, (good or bad) or how long, or how short a Time they practis'd these Things, or any of them: The Mayor and Aldermen probably thought themselves in the Right, the Commons thought them in the Wrong.

The

The Commons thereupon spying a favourable Opportunity, invite the Mayor and Aldermen to joyn with them, in an Application to the Parliament then in Being, to decide the Controversy without an unnatural Suit at Law; the Mayor and Aldermen at last come in to it much against their Will, and the Parliament by this Act ordained to the Effect before set forth, and I fear that it is from this very precedent and under the like view, that the Mayor and Aldermen lately challenged the Commoners to an Appeal to Parliament, how much soever they are pleased to decry the Precedents of those Times.

I proceed to the Enforcements or additional Arguments urged by the ingenious Gentlemen of the Committee. And I hope that it will not be imputed to me, that I presume to argue with these Gentlemen, and the great Lawyers upon this Question, since what equally concerns all may equally be debated by all; and I am sure, I shall not censure any Person or Opinion which may be against me.

Rep. 1. b. c. First, they say the Charter of 15. *Edward III.* is in Truth an Act of Parliament, tho' it was not discover'd to be so before, and therefore more binding and effectual.

Rep. 1. b. I conceive it to be no act of Parliament: It is not in the Statute Rolls; they themselves cite it from the patent Rolls.

It was never put in ure, pleaded, or adjudged to be an Act of Parliament.

In the grand Case of the *Quo Warranto*, when we had Occasion to array all our Forces, there is no Mention of it.

The Statute of the 7. R. II. is generally set out in Pleadings for the Confirmation of our Customs; never this, that I can find.

As a Charter therefore it must stand, and as such, I have spoken of it before.

Ante p. 12. As to the Use they make of the Word *Confirm* in the Charter, I have also spoke to that before.

Rep. 1. c. Secondly, they are pleased to say, that this negative Voice was never, (that they find) called in Question or objected to, untill the Time of the unhappy Troubles, in the Year 1644. After what has been said I must submit it, whether it may not as reasonably be said, that this negative Voice was never assumed or claimed before that same Time, when I dare say the better Part of Mankind freely pardoned them for so doing, since thereby they were endeavouring to restrain the Fury and Madness, of those Times.

Rep. 2. a. b. Thirdly, they give us the Occasion upon which the Opinions already examined, were afterwards taken, upon which the Aldermen dissented and declared their Dissent by the Recorder in Common-council; the Commons (say they) protest against it, and appoint a Committee to see what their Power was, yet nothing was done therein by them, as your Committee can learn: By which Remark, I presume the Committee would insinuate the Acquiescence or Submission of the Commons thereunto.

As to the Occasion, I have nothing to do with it; as to the Insinuation, I shall speak to that immediately.

Rep. 2. b. c. The last Thing the Committee are pleased to mention is, the Report of a former Committee, made the sixth of June in the Year 1683, appointed to inspect the Acts and other Proceedings entered in their Journals in the Times of the Usurpation, or at any Time before or since that might be fit to be explained or repealed.

Amongst other Things, that Committee takes Notice of a narrative touching "Common-councils, called without Lord Mayor's Directions, and held after his Departure from it, by Virtue of an Ordinance of Parliament, 14th and 17th of June 1650.

"And of the Question put after the Lord Mayor and Aldermen were gone out of Common-council 26th September 1650, and of the

"Order, that the Lord Mayor and Aldermen withdraw out of the Common-council, and the Commons turned into a grand Committee, 3^d December 1651, of the

"Common-councils held without the Lord Mayor, or continued after his going out, 7th and 14th December 1652, 14th and 15th June and 24th October 1653, and of a

"Common-council held without the Lord Mayor and Lord Titchbourne voted into the Chair.

All which Proceedings were irregular enough, and might deserve to be censured. Then the Committee go back and represent that, 24th June 1644, it was declared, by "The Lord Mayor and Aldermen that they had a negative Voice in Common-council by antient Custom, and Charters of this City; and that

“ that they had seen the Opinions of divers Council heretofore, given to
 “ the Court of Aldermen under their Hands, viz. of the then present Lord
 “ chief Justice *Pemberton*, Sir *William Dolben*, Serjeant *Maynard*, Sir *Wil-*
 “ *liam Jones*, Sir *George Jeffreys* and Sir *Francis Winnington*; That the Lord
 “ Mayor and Aldermen, have a negative Voice in making Laws and Or-
 “ ders, and admitting of Officers, and humbly propound to take away all
 “ Disputes, in that Matter for the Time to come; that the same might have
 “ the Approbation and Concurrence, of the said honourable Court.

And then the present Gentlemen tell us that, that Report was the same Day, by Act of Common-council agreed to, and confirmed in the Words following, viz.

“ After reading of which Report, here openly in this Court, the same
 “ was by this Court, in the several Particulars thereof, well approved of,
 “ agreed to and confirmed; and it is enacted, by the Lord Mayor, Al-
 “ dermen, and Commons in Common-council assembled, that all the several
 “ Acts, Orders, and proceedings therein propounded, to be disclaimed and
 “ repealed, be repealed and made void, and they and every of them are by
 “ Authority of this Court disclaimed, repealed and made null and void.”

Rep. 4. b. c.

Rep. 2. c.

And the same Gentlemen tell us, that they produce this former Report to shew us what was the Opinion of the Commons themselves, at that Time upon this Question, and in what Manner they recognized this Right, of the Lord Mayor and Aldermen.

A little Recollection of the Situation of Affairs, at the Time of that former Report, will give us a great Light into this Matter, and shew us what Stress ought to be laid upon it. The Popish Plot had ended in a Presbyterian one, as it was then generally said; the Populacy, especially of the City, were extremely dissatisfied at this Catastrophe; they grew very tumultuous and refractory in their Elections, and what enraged them yet more, they thought they had not Justice done them in the Declaration of the Persons elected: At last to quell this Spirit of the City in Hillary Term, 1682, a *Quo Warranto* was brought against the City, and Judgment pronounced for the King, so soon after as in Trinity Term following, viz. 12th June 1683, *That the Liberties and Franchises of the City, should be seized into the King's Hands*, but the same was not entered at that Time. During this Interval on the 22^d Day of May 1683, was this Committee appointed, who by suggesting odious Comparisons, betwixt the Times of forty one and the then times were to frighten the People into an Acceptance of a new Charter, which was then preparing for them, under the most abject Regulations imaginable; and at the same Time and for the same Purpose, were to strengthen the Powers and Authorities of the chief Magistrates, who were all then, or were speedily to be, at the Devotion of the Court. Accordingly they made their Report, as you observe, very speedily, viz. the 6th of June 1683. Judgment was pronounced six Days after that, and on the 18th of the same Month of June, was Submission made by the City to the Crown, tho' not so soon, it seems, as was expected, asking Pardon for their Misbehaviour, and submitting themselves to his Majesty's Will and Pleasure; they are sent back with a Reprimand for not coming sooner, and with the Terms and Regulations (servile and abject enough) upon which they might expect a new Charter; and at the same Time Notice was given them, that Judgment upon the *Quo Warranto* should be entered up against the City on Saturday next, unless the City prevented it by their Compliance to the said Regulations, in the mean Time. The City immediately assemble in Common-council, where after all the previous Preparations and Intimidations abovesaid, it was carried to submit to his Majesty's Regulations by a Majority of eighteen Voices only, as it is said, and no more: And this is the true State of that Matter, as I understand it.

But to the Argument, I cannot but own that this is a very strong Declaration of the Sense or Opinion (or of the pretended Sense or Opinion) of the then Common-council in Favour of my Lord Mayor and Aldermen; and would be a very strong Evidence against us, if there was less Imputation upon it, or if we were in a Case less clear. However, it can never be construed in my Opinion to be an Act of Common-council, to bind their Successors, as some are pleased to argue; it has a Retrospect only, and no Prospect as all Laws *de futuro* have “ That all the several Acts, Orders, and Proceedings therein pro-
 “ pounded to be disclaimed and repealed, be repealed and made void, and
 “ they and every of them, are by Authority of this Court disclaimed, re-
 “ pealed, and made null and void.” But how they were to behave for the future it is not said: It rescues my Lord Mayor and Aldermen from the Pre-

Com. Coun.
17 Jul. 1683.
See Append.

cedents of those unhappy Times, some of which were bad enough, but gives them no new Power, but leaves them in such Condition as those Times found them in. Let them take it therefore, as a Declaration or Recognition, as strong as they can make it; but as an Act of Common Council we cannot allow it. And that it was never meant or intended for an Act of Common Council, or for any thing else, even by that very Common Council, but to serve the present Purpose, is to me, evident from this, that the very same Common Council, as well as all others, which succeeded them, proceeded as before, under the very same still, and voted in the very same Manner, notwithstanding this their Declaration. And this brings me to the Remark made by the Committee, whereby they would insinuate, that the Commoners acquiesced under the Declaration made by the Mayor and Aldermen in 1674, because they appointed a Committee *to see what their Power was, but that Committee did nothing*. In my poor Opinion, this Remark had been better spared; the Mayor and Aldermen make an empty Declaration of their Negative Voice, the Commoners appoint a Committee to see what their Power was, the Mayor and Aldermen notwithstanding proceed in Business, and vote therein as before, and continue to joyn in enacting By-Laws under the very same Style, and in the very same Manner as formerly, *viz.* by the Mayor, Aldermen and Commons in Common Council assembled, and by the Authority of the same. The Commoners therefore did not do any Thing, nor had they Occasion to do any Thing; but, on the other Hand, if the Mayor and Aldermen had had, as they pretended, a Negative Voice in Common Council by ancient Custom and Charters, and that they were first deprived of their Right by an Act of the Commons in the Year 1648, for endeavouring thereby, as much as in them lay, to prevent the Ruine of the King and Kingdom, surely, they might with much Justice, Ease and Glory, have taken it up again at the Restoration; but they never then so much as pretended to it. Again, when in the Year 1674, they were provoked by the Behaviour of the Commoners to renew their Claim to a Negative, and had it supported by so many and great Lawyers as have been mentioned, yet they did not pursue it, but were content to go on, as before: And now that they have lately a third Time renewed their Claim to this extraordinary Power; and that in so solemn and pompous a Manner, yet within a very few Days after they were content to vote *per Capita* in the Election of a Town-Clerk, as all the City very well know: If any other Persons whatsoever had acted so in the like Case, I should have been very much inclined to suspect that they themselves did not really believe in their own Claim.

But we have almost lost or dropt greater Part of the Question which must now be spoke to particularly, (*viz.*) “Whether the Lord Mayor and Aldermen have a Negative Voice in admitting of Officers, and in all Matters propounded in Common Council.”

What, cannot the Common Council elect the Common Serjeant, Town-Clerk, Judges of the Sheriffs Court, &c. Yes, they may perhaps elect them, but the Mayor and Aldermen may chuse whether they will admit them or no; for those Officers are admitted and sworn before them in the Court of Lord Mayor and Aldermen. Here you find we are setting up a Negative for the Court of Lord Mayor and Aldermen, *quatenus*, a Court.

Cannot the Representatives of the Commonalty of the City in Common Council assembled, address or petition the Crown or either House of Parliament, by Way of Congratulation, or for Redress of Grievances, especially when the City is so numerous, so wealthy and trading a Body as it is, and may be variously and greatly affected upon many Occasions, without the express Consent of the Lord Mayor and Aldermen? No, they may not. May not the City in Common Council invite his Majesty or the Royal Family to their solemn Feasts and Entertainments, tho’ it is very well known that the Expence of those Entertainments are born by the Mayor and Commonalty, and Citizens, and not by the Mayor and Aldermen, without the like Consent as before? No. May they not hear the Sentiments and Desires of their Fellow Citizens, whose Representatives they are, by Petitions or otherwise, and frame some Resolutions thereabouts without the Leave of the Mayor and Aldermen? Here perhaps they may, but cannot, it seems, take any Resolution thereabout without the Leave of the Mayor and Aldermen. May not a Majority of the Common Council appoint a Committee to contract for letting or selling the City Lands; and may not they afterwards confirm and set their Common Seal, *Commune Sigillum Baronum Londiniariorum*, to such Contracts? If that be construed to be an Act or a Matter propounded in Common

mon Council, it seems they cannot (say they) unless the Lord Mayor and Aldermen allow thereof. You may as well go on and say, that tho' the Common Hall elect their Sheriffs, Chamberlain, &c. yet the Mayor and Aldermen may, or may not, admit them at their Pleasure, and then you have said all. I think the Arguments are as strong against the Common Hall as against the Common Council, and if I mistake not, they infer their Power over the Common Council from their Superiority over the Common Hall. What, does not the City stand incorporated by the Name of Mayor and Commonalty and Citizens of the City of *London*; and are not all their Revenues, Franchises and Privileges vested in them by that Name, and not in the Mayor and Aldermen? And have we no share in them, or is the Name of Commonalty and Citizens there used in Trust only for the Mayor and Aldermen? What are we called to Common Halls and Common Councils for, if we have no Power there? To give Advice or Counsel. To whom? To the Lord Mayor and Aldermen. Ridiculous! To advise the Advisers, and counsel the Counsellors; we had far better be at Home and in our Business, than to come out upon such sleeveless Errands.

But I have gone beyond my Design; to return to the Argument, let the Consequence be what it will.

As to the Election of Officers, I think it might easily be proved, that the Common Council (amongst many other Advantages) have had the Disposal of many more Officers than now they have, before they gave Way to the Appointments of the Chair, for the Honour and Dignity thereof; tho' even in those Appointments, the Aldermen have come in for a Share which was never designed them; whereof the Chair hath more than once complained in Common Council. At present however, the Disposal of the two Places of Judges in the Sheriffs Court, stand established in the Common Council by two Verdicts and Judgments thereon obtained; one in the Case of *Proctor* against *Bradshaw* in the Year 1655, and the other in the Court of Exchequer in the Case of the same *Proctor* and *Phelips*, in the Opposition to the Appointments of the Mayor and Aldermen: Which are full Authorities, as I conceive, that the Lord Mayor and Aldermen had no Negative in the Disposal of those Offices, and the Places of Common Serjeant, Town-Clerk and Common Cryer, have been by them disposed of to this Day, without Contradiction. And, I dare say, the Mayor and Aldermen would never have suffered those Places to have been disposed of so long without Contradiction, if they had really believed that they had had such a Prerogative in the Disposal thereof, as is now set up; but after the Manner of all Mankind, would certainly in all this Time have exerted the same upon one Occasion or other, or in Favour or Disfavour of one Candidate or other.

As to the admitting:

If by admitting, they mean the bare admitting him to take his Oath of Office in the Court of Aldermen; I do not think that that lies in their Discretion. If a Town Clerk be duly elected, and offer himself ready to take the Oath of Office in the Court of Aldermen, and that Court refuses to administer to him the Oath, surely he may have a *Mandamus* or other Remedy against them.

If they mean something more by admitting, as examining and judging of their Qualifications, &c. and thereupon to admit or not admit, as they shall think fit: In the first Place this is a very preposterous Claim; they had better by far set up to try and examine the several Candidates, to prevent needless Trouble and Elections; in the next Place it is very strange, that the Lord Mayor and Aldermen should be assisting with others at an Election, and then afterwards assume a Power by themselves to frustrate that Election: This I say is very new and singular, and in short, absurd.

Lastly, as to all Matters propounded in Common Council.

And here as to *Addresses*, *Petitions* of both Kinds, whether to or from the Common Council, and some other Matters which occurred to me, I have said something already, to which and the Titles of the Addresses and Petitions before spoken of, I beg Leave to refer you: New Instances under this Head, or new Arguments they have none; they rather seem to expect that this Point must of Course follow the Fate of the former Points, and upon this Footing am I content to leave it, with this single Observation, That if this be the Law of this City, that the Lord Mayor and Aldermen have a Negative in all Matters propounded in Common Council, then the Common Council Men and the Commonalty they represent are, of all others, in the most despicable Condition, the Common Council Men of the Metropolis in a
lower

lower Condition than the Common Council Men of the meanest Corporation, without Power or Privilege to recommend them.

I will but just look a little back and briefly recount to you the Contrariety and Difference among the several Advocates of this extraordinary Power (and Contrariety or Difference, you know, where or how to settle a Right, weakens the Right every where and in every Manner.)

Some go about to found this Negative Voice (as they call it) upon the Separation of the two Houses; others again upon the three several Estates.

Some seem to allow the Power to be equally placed in the Mayor, Aldermen and Commoners, but assert a Prerogative in the Mayor and Aldermen to controul that Power, and that Way establish a Negative; others again place all the Power in the Mayor and Aldermen, and none in the Commoners, but give them Liberty to consent or advise, and consequently this Way set up the Negative.

Rep. 5.

Rep. 2. a. b. At one Time the Aldermen insist upon a Negative without the Lord Mayor.

Rep. 4. b. At another Time the Mayor and Aldermen together claim a Negative.

And Mr. Common Serjeant *Jeffreys* claims a Negative for each of them, but shamefully drops my Lord Mayor in the Pursuit of the Argument.

Rep. 4. b. Lastly, the *Locum tenens* claims a Negative as well as the Lord Mayor himself; and what is very remarkable, all these several Claims are maintained by the *very same Arguments*, and from the *very same Set of Expressions*.

For some Purposes this Power is placed in the Mayor and Aldermen generally, and for others in the Court of Lord Mayor and Aldermen, *quatenus* a Court, as in Case of admitting Officers.

Some derive this Power from the Charter of the 15 *Edw. III.* and others from Custom long before that.

Some call this a bare Charter, others make it an Act of Parliament; and thus are they trying Experiments upon the poor Commoners.

I have now given you my Thoughts upon this Subject in the best Manner I am able, as I promised you at the beginning; and must now submit it to you whether one or two empty Arguments and Declarations without any Instances, Facts or Practice to support them, can be deemed sufficient to take away what I may properly enough call the Birthright of the Commonalty and Citizens of this City. Whatever is defective in this Answer, I doubt not but to see supplied very speedily by you and those ingenious Gentlemen who are especially appointed to vindicate the Commonalty and Citizens against these and such like Pretences and Encroachments. If I have put the Question into a proper Course of Examination, and have suggested any Thing that may be of Use to you and those other Gentlemen, I have gained my End. At present, and till better Proofs are produced on the other Side, I beg Leave to subscribe, with Mr. *Steel*, who in my Opinion, has the better of the other Lawyers in this Case, whatever he may have in other Respects and Comparisons.

I once proposed to have sent you my Thoughts, in the like plain Manner, and from the very same Principles, upon the Elections of Aldermen and Sheriffs and Common Council Men, so much litigated of late amongst us; but I am interrupted by other Affairs, and I think this Epistle has proved long enough for one.

It rests only, that I ask your Pardon for giving you so much Trouble; the good Intention and Design herein must be the Excuse for

May 1. 1724.

Your humble Servant.

Londinensis.

APPENDIX.

The Entries or Forms of penning of Acts of Common Council.

- C**oncordat' fuit per Majorem, Aldermannos & Coiarios, &c. Lib. Leg. 2. 19 Ed. III.
De Assensu præd' Major' Alderman' Vic' nunc presen' & totius Com- 20 Ed. III.
munitatis Concordat' est, &c. *ibid.* 6.
- Concordat' per Major' & Alderman' & totam Coitat' &c. *ibid.* 6. b.
- Die Mercurii prox. post Festum Sanctæ Katherin' Anno Regni Regis Ed. 3. 28 Ed. III.
28 Cor' Adam de Bury Major', Alderman' & immensa Communitat' in Magna
Aula Guibald London' existen' per eor' Com' Assensum Ordinat' fuit, &c. *ibid.* 17.
- Per Assent de Maire & Aldermannes & tote la Comonaltie de la Citée saint 37 Ed. III.
Ordeigne les Peintz south escript a tenez & ferment gardes cy tous jours.
ibid. 13. b.
- Ordeyne est per commune assent des Meire Audermans & lez Coiaries a ces 39 Ed. III.
Somonitz, &c. *ibid.* 19. a.
- Quædam Ordinatio de Abrocar' per Major' & Alderman' nuper fact' lecta 47 Ed. III.
fuit & Concordat' per eisdem Major' & Alderman' ac Communitat' ejusdem
Civit' ex eor' Com' Assensu quod de cetero observet' *ibid.* 24. b.
- In Com' Concil' Civitat' presentibus Major' & Alderman' tam etiam pro- 3 Rich. II.
bis hoibus de Singul' Mister' Elect' quam al' de Valentioribus & discretioribus
Civibus per Dictum Major' ad hoc Summonit' ex unanimi consensu Concessum
& Ordinat' fuit, &c. *ibid.* 37. a.
- It was established and ordained by common Assent of the Mayor, Alder- 10 R. II.
men and Common Council. *ibid.* 52. b.
- Par assent des Maire Audermans & Cominaltée de la Citée de Londree or- 21 R. II.
deine est, &c. *ibid.* 82. a.
- Per Major' Alderman' & Communit' Ordinat' fuit & Concordat' &c. *ib.* 63. b. 9 Nov.
Concessum fuit per Major' Alderman' & Commun' Civitat' London' in eor' 4 Hen. IV.
pleno & Com' Concil' &c. 21 Jan.
ibid. 76. b. 4 H. VI.
- The Bill thereafter specified, was granted by the Mayor, Aldermen and 27 Nov.
Common Council, and commanded to be entred and enacted here of Re- 1 H. VIII.
cord in Manner following, &c. *ibid.* 123. b.
- It is by the Mayor, Aldermen and Common Council at this present Day 19 March,
and Time assembled, and by Authority of the same, ordained, &c. *ibid.* 160. b. 17 H. VIII.
- Be it therefore ordained, &c. by the Lord Mayor, Aldermen and Commons 16 Jun.
in this present Common Council assembled, and by Authority of the same. 6 Ed. VI.
- ibid.* 235. b.
- Enacted by the Lord Mayor and his Brethren the Aldermen, by the Assent 2 May, 1 & 2
and Consent of the Commons in this present Common Council assembled, and P. & M.
by Authority of the same. *ibid.* 245. a.
- It is enacted and established by the Lord Mayor, Aldermen and Commons Ult Die Feb.
in this present Common Council assembled, and by the Authority of the same. 2 & 3. P. & M.
- ibid.* 247. a.
- It is this Day by the Lord Mayor, Aldermen and Commoners now in this 5 Aug. 4 & 5
present Common Council assembled, ordained, &c. and by the Authority of the P. & M.
same. *ibid.* 253. 4.
- Be it ordained, &c. by the Lord Mayor, Aldermen and Common Council 30 Aug.
of the said City now here this Day assembled, and by Authority of the same. 6 Eliz.
- ibid.* 262. 3.
- Com' Concil' rent' cor' Major' Recordat' divers' Alderman' & Majore parte 3 May,
Coiarior' 13 Eliz.
- Be it enacted, &c. by Authority of this Common Council, &c. *ibid.* 274. b.
- Be it now by this Common Council assembled, and by Authority of the 1 April,
same, declared and established, &c. *ibid.* 284. 16 Eliz.
- Com' Con' tent' Cor' Major' Recordat' divers' Alderman' ac immensa Mul- 15 Jun.
titud' Coiarior' dce Civitat' &c. 16 Eliz.
- Be it enacted by Authority of this Common Council. *ibid.* 286. 7.
- The like Title. 16 April,
- For Redress whereof, by the Advice of the Lord Mayor and his Brethren 17 Eliz.
the Aldermen, it is ordered and enacted, &c. *ibid.* 290. a.

- Be it enacted by the Right Honourable the Lord Mayor, the Aldermen and Commons in this Common Council assembled. *ibid.* 297. 8.
- 25 Sept. Com' Concil' tent' cor' Major' Alderman' (noiat') ac Majore parte Coiarior'
30 Eliz. It is therefore by the Lord Mayor and Commons now assembled, and by Authority of the same, ordered and agreed, leaving out the Aldermen. *ib.* 341. b.
- 29 May, Com' Concil' tent' cor' the Mayor and several Aldermen who are named
32 Eliz. ac Major' parte Coiarior' dce Civit'
- Be it enacted by the Lord Mayor, Aldermen and Commons in this Common Council assembled, and by Authority of the same. *ibid.* 354 a. a. b.
- 12 Dec. Com' Con' tent' cor' the Mayor, several Aldermen, who are named
43 Eliz. & Majore parte Coiarior' de Com' Concil' ejusd' Civit' existen' &c.
- Be it enacted by the Right Honourable the Lord Mayor, his Right Worshipful Brethren the Aldermen of the same City, with the Assent of the Commons in this Common Council assembled, and by Authority of the same. *Lib. B.B. f. 74. b.*
- 1 July, Com' Con' tent' cor' Major' Recordat' several Aldermen who are named
1 Jac. I. ac Majore parte Coiarior' &c.
- Enacted by the Mayor, Aldermen and Commons in this Common Council assembled, and by Authority of the same. *ibid.* 199. b.
- Com' Con' tent' &c. as before.
- 20 Oct. 1610. It was enacted by the Lord Mayor, the Aldermen his Brethren and Commons in this Common Council assembled, and by Authority of the same,
8 Jac. I. That, &c. *Lib. D. D. 179. b.*
- Com' Con' tent' &c. as before.
- 19 Dec. It is enacted by the Lord Mayor and Aldermen, with the Assent of the Commons in this Common Council assembled, and by Authority of the same, &c.
15 Car. I. *Jor' Garway, N^o. 39. f. 36. a.*
- Com' Con' tent' &c. as before.
- 24 Mar. 1640. Enacted by the Lord Mayor, Aldermen and Commons in this Common
16 Car. I. Council assembled, and by Authority of the same. *Jor' Wright. N. 40 f. 1.*
- 10 May 1661. Com' Concil' tent' cor' Ric' Browne Major' several Aldermen named, nec non Major' parte Coiarior' de Com' Concil' ejusd' Civit' tunc & ibidem assemblat. Enacted by the Lord Mayor and Aldermen and Commons in Common Council here assembled, and by Authority of the same. *Jor' Brown. N. 41. f. 250.*
- 4 Dec. 1661. Com' Con' held, &c. as before.
- Be it enacted and established by the Right Honourable the Lord Mayor, the Aldermen his Brethren, and the Commons in this Common Council assembled, &c. *Jor' Frederick. N. 45. f. 152. b.*
- 8 April 1675. Com' Concil' tent' cor' R. Viner Mil' Major' Civitat' London' (A. B. &c. Alderman') nec non Majore parte Coiarior' de Com' Con' dce Civitat' tunc & ibidem assemblat.
- 2 April, 1677. Com' Con' tent' &c. as before.
- Be it enacted by the Right Honourable the Lord Mayor, the Aldermen his Brethren, and the Commons in this Common Council assembled, and by the Authority of the same. *Jor' Davis. N. 48. f. 298. 307.*
- 17 July 1683. Com' Con' tent' &c. as before.
- Enacted by the Right Honourable the Lord Mayor, the Worshipful the Aldermen his Brethren, and the Commons in this Common Council assembled, and by Authority of the same. *Jor' Pritchard, 84.*
- And such hath been the Style, and Form of penning, ever since.

The Form of Words whereby several Acts of Parliament delegate Powers to the Common Council.

- 13 Car. II. None shall solicit Hands to any Petition, &c. in London, to the King, &c.
cap. 5. §. 2. unless that the Matter thereof hath been first assented unto by the Lord Mayor, Aldermen and Commons in Common Council assembled.
- 19 Car. II. Be it enacted that the Lord Mayor, Aldermen and Common Council, shall
c. 3. §. 4. and may, &c.
- Ditto §. 20. Be it enacted, that the Number and Places for all common Sewers, &c. shall be set out by such Persons as the Mayor, Aldermen and Commonalty in Common Council assembled, shall appoint, &c.
- Ditto §. 21. That it shall and may be lawful for the Lord Mayor, Aldermen and Common Council, to, &c.
- Ditto §. 22. Be it enacted, that the Mayor, Aldermen and Commonalty, by Order of Common Council, may, &c.
- Ditto §. 23. Be it enacted, that the Mayor, Aldermen and Commons in Common Council assembled, may, &c.

The Mayor, Aldermen and Common Council shall and may, &c. *Ditto* §. 25.
 Be it enacted, that the Mayor, Aldermen and Commons in Common Council assembled, shall, &c. *22 Car. II. c. 11. §. 3.*
 Licences granted by the Lord Mayor, Aldermen and Common Council, &c. *Ditto* §. 82.
 Provided the Mayor, Aldermen and Common Council shall not, &c. *22 & 23 C. II. c. 14. §. 5.*
 As the Mayor, Aldermen and Commonalty in Common Council assembled, shall, &c. *22 & 23 C. II. c. 17. §. 1.*
 By the Mayor, Aldermen and Commons in Common Council assembled, &c. *Ditto* §. 3.
 The Mayor, Commonalty and Citizens, shall and may, &c. in such Manner as the said Mayor, Commonalty and Citizens, in their Common Council assembled, &c. shall direct. *5 & 6 W. & M. c. 10. §. 4.*

The Style or Title of Addresses and Petitions from the Common Council, viz.

To the King's most Excellent Majesty, the Humble Address [or Petition] of the Lord Mayor, Aldermen and Commons in Common Council assembled.

The Style or Title of Petitions to the Common Council.

To the Right Honourable the Lord Mayor, and to the Worshipful his Brethren the Aldermen and Commons in Common Council assembled.

F I N I S.



